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In the Supreme Court of the United States

OCTOBER TERM, 1977

NO. 77-1492

RAPIDES PARISH POLICE JURY, ET AL.,

Applicants

versus

THOMAS R. PARNELL, ET AL.,

Respondents

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES FIFTH CIRCUIT COURT OF APPEALS

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TABLE OF CONTENTS

	Page No.
Citations	ii
Question Presented	1
Reasons for Denying the Writ	5
Conclusion	6
Certificate of Service	7

CITATIONS

	Page No.
CASES:	
Chapman v. Meier, 420 U.S. 1 (1975)	2
Connor v. Johnson, 402 U.S. 690 (1971)	2
East Carroll Parish School Board v. Marshall, 424 U.S. 636 (1976)	2
Sixty-Seventh Minnesota Senate v. Beens, 406 U.S. 187 (1972)	5
Turner v. McKeithen, 490 F.2d 191 (1973)	4
White v. Regester, 412 U.S. 755 (1973)	2
STATUTES:	
La. Rev. Stat ANN. § 33:1221 (West Supp. 1977)	4

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Respondent prays that this Court deny the petition for Writ of Certiorari sought by petitioner Police Jury to review the decision of the United States Court of Appeals for the Fifth Circuit rendered November 17, 1977 affirming in part and modifying in part the judgment of the United States District Court for the Western District of Louisiana issued September 30, 1976.

QUESTION PRESENTED

Whether the District Court was within its discretion in providing as a remedy a 9-member single-member district plan of apportionment. For the Rapides Parish (county)

Police Jury (governing body) where 1) the number of members was within the range required by Louisiana Law for Police Juries, 2) the Police Jury did not propose a single-member district plan, but relied on its 18-member multi-member district plan, 3) the Court's 9-member single-member district plan had already been in operation and proved both feasible and not racially discriminatory, and 4) the Court's plan was acceptable to both the School Board and to the Black plaintiffs.

STATEMENT OF THE CASE

This is a routine redistricting case involving the formulation of an appropriate remedy for long ago conceded malapportionment. The conflict is between two conflicting plans: 1) an 18-member multi-member district plan advocated by the petitioner Police Jury; and 2) a 9-member single-member district plan advocated by Black plaintiff-respondents and found acceptable by the Rapides Parish School Board (which was a party in the District Court). Both the District Court and the Court of Appeals concluded that the 18-member multi-member district plan was an inappropriate remedy under the non-constitutional standard of *East Carroll Parish School Board v. Marshall*, 424 U.S. 636 (1976) *Chapman v. Meier*, 420 U.S. 1 (1975), and *Connor v. Johnson*, 402 U.S. 690 (1971). Based upon extensive evidence adduced at the trial, the district court went a step further and also concluded that the 18 member multi-member district plan was so clearly racially discriminatory that it would also violate the more stringent constitutional standard of *White v. Regester*, 412 U.S. 755, (1973). The Court of Appeals also agreed with this conclusion.

The petitioner Police Jury whose members are all white, did not propose or advocate any single-member district plan, but had stood on its 18 member multi-member district plan. As a remedy the District Court turned to the 9-member single-member district plan which had been in operation for a short period of time and under which the present School Board, including its two Black members, had been elected. The present Police Jury, which is all white, had been elected under the multi-member district plan. Since the 9-member single-member district plan had already been in operation, the District Court knew that its implementation was practical and that the plan was familiar to those charged with conduct of the elections as well as to the electorate as a whole. The District Court could also observe that in operation the plan was racially fair. The departures from perfect population circumstances include: 1) the fact that the petitioner Police Jury did not propose any single-member district plan, but relied on their 18-member multi-district plan; 2) that the 9-member single-member district plan had been in operation, was familiar to voters, the registrar and election officials, and had proved in operation to be both practicable and fair; 3) that the present school board, including two Black members, had been elected under the 9-member single-member district plan and accordingly the approval of that plan would avoid the disruption and confusion that would result from implementation of a new plan (particularly in view of the staggered terms of the Board); 4) that having the same plan for both School Board and Police Jury would tend to simplify political participation by an electorate that was no doubt confused by a succession of districting plans; 5) that the 9-member single-member district plan had an unusually low maximum deviation of 2.2% from the equi-populous norm.

Louisiana's state policy with respect to the number of police jurors is clearly different from Minnesota's policy with respect to the number of state senators. Minnesota's statute says flatly there shall be 67 state senators, whereas Louisiana's statute sets a range of five to fifteen jurors or any number that existed prior to the 1974 enactment. See LA. REV. STAT. ANN. § 33:1221 (West Supp. 1977) (reproduced at p. 40 of the petition for Certiorari).

In Parish Police Jury and School Board redistricting litigation in Louisiana it has long been recognized as elementary that the state policy simply provides a permissible range in the number of members and that reapportionment plans should stay within that range. *Turner v. McKeithen*, 490 F. 2d 191 (1973), provides an example of how this restraint as to the number of members operates. There, the Ouachita Parish Police Jury had been elected under a 19-member multi-member district plan. It proposed to the Court a 15-member multi-member district plan, but did not propose a single-member district plan. The District Court selected and the Fifth Circuit upheld a 6-member single-member equality in the 9-single member district plan are unusually low, the maximum deviation being 2.2%.

Both the District Court and a unanimous Court of Appeals agreed that the court-ordered 9-single member district plan conformed to the state policy respecting the number of police jurors, and that the choice of this particular plan, which happened to have fewer members than preferred by petitioners, was justified under the circumstances of this case.

REASONS FOR DENYING THE WRIT

The decision below is consistent with decisions of this Court, other decisions of the United States Court of Appeals for the Fifth Circuit, and does not conflict with decisions of other Circuits.

The only decision of this Court which petitioners contend conflicts with the decision below is *Sixty-Seventh Minnesota Senate v. Beens*, 402 U.S. 187 (1972). Such is clearly not the case.

In *Beens* the District Court reduced the size of the state senate from 67 to 35 members. The number of members of the Senate was firmly set at 67 by state statute and it had maintained that membership since 1913 though two reapportionments. This Court found the District Court's decision to be an abuse of discretion in that it unnecessarily interfered with the policy of state of Minnesota.

The present case is different from *Beens* in many obvious and important ways. In the first place the Court's remedy in the instance case does not conflict with the state policy respecting the number of jurors. Rather, the number of members in the Court's plan falls safely within the range set by the state statute. Secondly, there are a number of special circumstances in the present case, which were absent in *Beens*, which would justify the Court's choice of the 9-member single member district plan, even if it violated the state policy with respect to size. These district plan proposed by plaintiffs.

CONCLUSION

The decision below is consistent with decisions of this Court including *Beens, supra,* is consistent with other decisions of the Fifth Circuit including *Turner, supra,* and does not conflict with decisions of other circuits. The case is a routine one applying clear principles of federal decisional law in a manner that does not conflict with state policy. The case is simply not worthy of the discretionary Writ and respondents respectfully urge that the Petition for Certiorari be denied.

Respectfully submitted,

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BY:

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response to Petition for Certiorari has been served upon the following counsel of record:

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New Orleans, Louisiana, this 19th day of May, 1978.

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STANLEY A. HALPIN, JR.